

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

IN RE:

MARITIME COMMUNICATIONS/LAND MOBILE, LLC
Debtor

CHAPTER 11
CASE NO. 11-13463-JDW

**ANSWER AND RESPONSE TO
EMERGENCY MOTION TO QUASH NOTICE OF DEPOSITIONS**

COMES NOW, Maritime Communications/Land Mobile, LLC (the "Debtor"), and files this its Answer and Response to the *Emergency Motion to Quash Notice of Deposition* [DK #993] (the "Motion to Quash") filed herein by Denton County Electric Cooperative, Inc. d/b/a CoServ Electric ("CoServ"), and in support thereof, would respectfully show as follows, to-wit:

I.

FACTUAL BACKGROUND

1. The only thing the Debtor needs to add to the Factual Background is that the CoServ representative mentioned in the Factual Background, Curtis Trivitt, was equivocal in certain of his answers with respect to some of the defenses asserted by the Debtor in connection with the Admin-Expense Motion (as defined in the Motion to Quash). He was equivocal in whether he had the requisite knowledge to testify as to certain of these defenses, and as to when certain events occurred and certain decisions were made.

2. The Debtor's defenses to the Admin-Expense Motion include defenses of impossibility, impracticability and waiver. These defenses go far beyond the "scope" of the Agreement (as defined in the Motion to Quash). Specifically, the Order of this Court that granted the Debtor's motion to assume the pre-petition CoServ executory contract (for the sale and purchase of FCC spectrum) was entered in December of 2011. The Debtor's time for delivery of FCC spectrum

under the pre-petition agreement expired in approximately March of 2012 – which gave the Debtor only about ninety (90) days in which to obtain FCC approval (a necessary element of the CoServ-Debtor Agreement) of the transfer of the FCC spectrum. To date, the Debtor has not received FCC approval of any transfers of spectrum held by the Debtor to any purchaser, despite the fact that orders have been entered for over a year granting the sale of FCC spectrum.

3. The Debtor believes that it will be clear at the hearing in connection with the Adm-Expense Motion, that CoServ knew, or should have known, that it was impossible to obtain the requisite approval from the FCC in the short period of time between entry of the order approving assumption of the pre-petition contract and the expiration of the Debtor's time to perform thereunder.

4. Trivitt was equivocal in his deposition about when CoServ began considering “going in another direction” in connection with the purchase of the FCC spectrum, but his deposition was clear that CoServ was considering that in late 2011 or early 2012. Trivitt had no documents with respect to the decision to go in another direction, nor did it appear that he was the appropriate person finally making that decision.

5. Although CoServ produced a substantial number of e-mails concerning many aspects of the sale of spectrum from the Debtor, and some e-mails with respect to considering going in another direction, there were no e-mails to/from CoServ or any prospective sellers of spectrum and there were certainly no documents produced indicating that CoServ had reached a bargain with another seller of FCC spectrum to replace the Debtor.

6. One of the Debtor's other defenses is that CoServ had a duty to mitigate its damages. In the event CoServ, in an effort to mitigate damages, struck a “better” deal than it has with the Debtor, that is certainly a relevant issue in connection with the defenses that the Debtor has asserted. The Debtor will not know that unless documents and/or testimony are produced that reflect the

agreement CoServ has actually struck (if in fact it has actually struck a separate agreement for the purchase of FCC spectrum).

7. Based upon the number of e-mails that were produced at Trivitt's deposition, the Debtor believes that there will be a significant amount of e-mail traffic to/from CoServ representatives, prospective sellers of FCC "replacement" spectrum and perhaps brokers of FCC spectrum that will reflect the timing, and efforts, made by CoServ to "replace" the Debtor with another seller of spectrum and whether or not these discussions were sufficient to lead to a claim of anticipatory breach of contract.

8. None of these issues were thoroughly covered by Trivitt and, as noted, if CoServ has entered into contracts with other sellers of spectrum, those contracts were not produced – nor discussed – in the prior deposition.

9. It appears relatively clear to the Debtor that CoServ has something to hide here – otherwise, production of documents and another witness to explain the questions the Debtor has with respect to "going another direction" and the purchase of replacement spectrum would be simple enough to reflect through either document production and/or live testimony.

10. While it is uncertain as to whether the Debtor will prevail upon its defenses, it certainly needs the information to make a clear decision regarding going forward with the trial, attempting to negotiate a settlement or simply confessing the Admin-Expense Motion. The Debtor is uncertain why there is so much resistance to issues and materials that are clearly relevant, and, with the Debtor's limited funds, the cost of defending this Motion to Quash are considerations the Debtor must contemplate further.

WHEREFORE, PREMISES CONSIDERED, the Debtor respectfully prays that the Court will deny the Motion to Quash and for other relief.

DATED, this the 29th day of January, 2013.

Respectfully submitted,

MARITIME COMMUNICATIONS/LAND MOBILE, LLC

By Its Attorneys

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CERTIFICATE OF SERVICE

I, Craig M. Geno, do hereby certify that I have caused to be served this date, via electronic filing transmission and/or U. S. Mail, postage prepaid, a true and correct copy of the above and foregoing to the following:

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THIS, the 29th day of January, 2013.

/s/ Craig M. Geno
Craig M. Geno